

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

E.I. DU PONT DE NEMOURS AND
COMPANY, a Delaware corporation

Plaintiff,

v.

CANYON GROUP LLC a Delaware limited
liability company, and NISSAN CHEMICAL
INDUSTRIES, LTD., a Japanese corporation

Defendants.

C.A. NO. 15 - 200

PUBLIC VERSION

COMPLAINT FOR PRELIMINARY INJUNCTIVE RELIEF AND
BREACH OF CONTRACT AND TORT CLAIMS

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Dated: April 7, 2005/676979

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**CONFIDENTIAL -
FILED UNDER SEAL
PURSUANT TO L.R. 26.2**

**COMPLAINT FOR PRELIMINARY INJUNCTIVE RELIEF AND BREACH OF
CONTRACT AND TORT CLAIMS**

Plaintiff E. I. du Pont de Nemours and Company ("DuPont"), by and through
undersigned counsel, on information and belief and based on all of the facts set forth below,
alleges as follows:

I. NATURE OF THE ACTION

1. This is an action for preliminary injunctive relief in aid of international arbitration
arising out of contractual breaches and tortious conduct by Nissan Chemical Industries, Ltd.
("Nissan") and its alleged "affiliate" Canyon Group LLC ("Canyon Group").

2. DuPont and Nissan are parties to _____ (the
"Agreement") that

REDACTED

used in _____ products.

The term "Territory" is defined in the Agreement

REDACTED

3. In return for its rights under the Agreement, DuPont agreed to

REDACTED

4. DuPont has fulfilled its obligations under the Agreement.
DuPont has expended considerable financial and human resources

5. are regulated in the United States as “pesticides” under the Federal
Insecticide, Fungicide and Rodenticide Act (“FIFRA”), 7 U.S.C. §136 *et seq.*

REDACTED

DuPont also has expended financial and human
resources

6. DuPont

DuPont initially

REDACTED

recently

obtained a U.S. registration

trademark and trade name

On information and belief, DuPont states that

has used the

outside

REDACTED

7. The relationship between Nissan and the Canyon Group is unknown. Nissan claims that Canyon Group is an Agreement-defined but despite DuPont requests for substantiation of this claim, has not provided DuPont with information to verify or clarify Canyon Group's status : **REDACTED**

8. is applied to after they have emerged from the soil. The next growing season for applying in the United States will occur from approximately and this season will be the last growing season for 2005. On information and belief, Canyon Group is planning

REDACTED during this next growing season. These activities are intended to and likely will divert from DuPont to Canyon Group and Nissan and is designed to erode DuPont's pricing **REDACTED** In order for Canyon Group for sale during the growing season, it must obtain sales, begin formulating and then distribute the products within the

9. Article 16-2 of the **REDACTED** calls for arbitration under the rules of the International Chamber of Commerce ("ICC") to take place in Japan.

10. DuPont is willing to arbitrate the dispute. However, the ICC will not be able to appoint an arbitrator and have the matter heard in the next critical 30 to 45 days. It is during this timeframe, Canyon Group and Nissan, and partners, **REDACTED** for the 2005 growing season.

11. Neither the ICC nor a Japanese court is in a position to enjoin conduct in the United States within the necessary timeframe.

12. Canyon Group is a Delaware limited liability corporation conducting business in the United States, including Delaware. DuPont does not know if it is subject to the arbitration provision in the Canyon Group is piggybacking onto

REDACTED

in its own name or through contractual partners, agents, and affiliates that give rise either to claims for breaches of contract or tortious interference with contract, or possibly both, as alleged herein.

13. DuPont requests preliminary injunctive relief enjoining Canyon Group, Nissan and any of their affiliates, agents, assigns or contractual partners such as Gowan Company from

REDACTED

in the Territory

until the dispute over the exclusivity expiration date is resolved through arbitration or until

when the

Agreement expires. Unless enjoined, Canyon

Group and Nissan's breach of the

Agreement will give them a

REDACTED

divert DuPont's customers to Nissan and Canyon Group,

cause confusion among customers and distributors, and

otherwise irreparably harm DuPont, as set forth herein.

II. PARTIES AND JURISDICTION

14. Plaintiff E.I. du Pont de Nemours and Company is a Delaware corporation with its principal place of business located at 1007 Market Street, Wilmington, Delaware 19898.

15. Defendant Canyon Group LLC is a Delaware limited liability company with its principal place of business located at 370 South Main Street Yuma, Arizona 85364.

16. Defendant Nissan Chemicals Ltd. is a Japanese corporation with its principal place of business located at Kowa-Hitotsubashi Building, 7-1, 3-Chome, Kanda-Nishiki-Cho, Chiyoda-Ku, Tokyo, Japan.

17. This Court has jurisdiction over the parties and claims asserted herein pursuant to 28 U.S.C. § 1331 and the Federal Arbitration Act, 9 U.S.C. § 203.

18. Venue is proper in this Court under 28 U.S.C. § 1391(a) and 9 U.S.C. § 204.

III. STATEMENT OF FACTS COMMON TO ALL CLAIMS

A. Overview of the Pesticide Industry

19. **REDACTED** used in the formulation of products. are regulated in the United States as “pesticides” under FIFRA. are intended to kill or the development of without harming desirable plants, *e.g.*, **REDACTED**

20. When used in a formulation with other ingredients, because it is applied after the has emerged from the soil. By killing various protects numerous crops, including

REDACTED

21. are regulated products. No may be made, promoted for sale or sold in the United States unless it is registered and approved by the EPA under FIFRA. State agencies also register FIFRA-registered pesticides for use within their respective state.

22. The FIFRA registration process in the United States, including maintenance of a registration once granted by the EPA, entails much time and cost. The registrant must submit

significant information and have conducted numerous studies designed to establish the efficacy and effect of the formulated product on targeted effects on productive crops, effects under the different soil and climatic conditions, residue and environmental fate studies to determine the effects of the and its breakdown byproducts on human health, animal health and the environment. The FIFRA registration process often requires years before EPA approves the registration application.

23. do not contain 100 percent of the active ingredient. A **REDACTED** will typically contain an "active" ingredient in combination with other ingredients that dilute the active ingredient or provide carriers or other properties to optimize the application and end-use on the approved crop. The actual formulation is proprietary and trade secret information. In the United States, in order to receive a FIFRA registration, the actual formulation must be disclosed and remain on file with the EPA as the Confidential Statement of Formula. EPA considers commercial products that deviate from the Confidential Statement of Formula to violate FIFRA.

24. The formulation of **REDACTED** or any pesticide, must conform to the Confidential Formulation Statement, which includes proprietary, confidential commercial, and trade secret information.

25. In the United States, EPA must also approve the FIFRA regulated label which, among other things, notifies the percentage of the active ingredient in the **REDACTED** formulation, sets forth (a) warnings and safety precautions, (b) use directions (including intended crops, timing and application rates), and (c) other pertinent information, before the may be registered and sold to the grower-user. EPA has registered and approved the label for the

REDACTED True and correct copies of the label and

EPA approval are attached hereto as Exhibits 1 and 2, respectively and by this reference incorporated herein

26. Nissan and DuPont own patents within and outside the Territory. The United States patent claiming

The Nissan Canadian patent

REDACTED

B. The Agreement and Agreements

27. In the early 1980s, DuPont and Nissan independently researched with the expectation that the research would yield a commercially viable

28. In 1982, DuPont and Nissan entered into the Agreement, effective July 30, 1982. A true and correct copy of the **REDACTED** Agreement is attached hereto as Exhibit 3 and by this reference is incorporated herein.

29. The Agreement sets forth the parties obligations and rights Under the Agreement, DuPont agreed

REDACTED

30. Under the Agreement Nissan (a) agreed

REDACTED

REDACTED

31. Specifically, the Agreement provides as follows:

REDACTED

A true and correct copy of the October 30, 1989 Amendment to the Agreement is attached hereto as Exhibit 4 and by this reference is incorporated herein.

REDACTED

REDACTED

32. DuPont and Nissan entered into a Letter Amendment to the Agreement to add clarifying language to Article 13, which is a provision of the **REDACTED** Agreement entitled "Termination." The amendment was transmitted under cover of letter dated December 21, 1983 and became effective on January 30, 1984. A DuPont representative executed the Letter Amendment on DuPont's behalf on January 6, 1984, a Nissan representative, executed the Letter Amendment on Nissan's behalf on January 30, 1984. A true and correct copy of the December 21, 1983 Letter Amendment is attached hereto as Exhibit 5 and by this reference is incorporated herein (hereinafter the "Letter Amendment.")

33. With respect to Article 13, the Letter Agreement

REDACTED

(Emphasis original.)

34. Below is a true and correct redlined version of Article 13 of the Agreement. Language added by the Letter Amendment is underlined and language deleted has a strikethrough line:

REDACTED

REDACTED

35. Article 13, as amended by the Letter Agreement, is valid and in full force and effect.

36. Under Article 7 of the . Agreement, DuPont and Nissan

REDACTED

37. On March 25, 1985, DuPont and Nissan

REDACTED

A true and correct copy of the is attached hereto as Exhibit 6 and by this reference is incorporated herein.

38. Article 11 of the Agreement is entitled "Period of Agreement," which provides that

REDACTED

39. In the United States,

REDACTED

DuPont and Nissan

(hereinafter the

Agreement”), until

Under the second supply agreement,

REDACTED

A true and correct

copy of the

Agreement is attached hereto as Exhibit 7 and by this reference is

incorporated herein.

C. DuPont Fulfills Its Obligations

40. DuPont has fulfilled its obligations under the

Agreement,

including, but not limited to, undertaking the following activities:

REDACTED

c. DuPont

from Nissan in accordance with the terms and

conditions of the pertinent

agreements.

REDACTED

41. In the United States, DuPont undertook activities
shortly after entering into
the Agreement.

42. In 1983, DuPont **REDACTED**
DuPont filed a trademark registration for its
trademarks and trade names in Exhibits 8 and 2 are records from the websites of
the United States Patent and Trademark Office and from the EPA confirming the submission
dates and by this reference are incorporated herein.

43. After reviewing DuPont's registration application, EPA approved DuPont's
registration for its on and approved DuPont's
registration for its on Through
DuPont's work **REDACTED** has been approved
for application in over a dozen crops. DuPont also submitted applications to state agencies. As a
consequence, quizalofop is a registered herbicide in over 40 states and Puerto Rico.

44. Pursuant to Article 9 of the Agreement,

REDACTED

D. is Commercially Successful

45. a commercially successful in the Territory. In the United
States, DuPont
also has significant sales in as well as sales throughout
and **REDACTED**

46. The commercial success direct result of DuPont's efforts.

REDACTED

E. Nissan and Canyon Group Breach the Agreement

47. The DuPont-Nissan relationship has worked well for the past twenty years.

48. In 2004, Nissan unilaterally decided to alter the parties' business relationship in the United States in derogation of DuPont's

49. In June 2004, Nissan and Gowan Company LLC, announced the formation of Canyon Group LLC, effective June 30, 2004. Their press announcement indicated that the

REDACTED

In addition, sales supporting transitional Nissan agreements with various companies will be channeled through Canyon. The new company will grow its business through product acquisitions and label expansions." A true and correct copy of the Canyon Group formation press release is attached hereto as Exhibit 9 and by this reference is incorporated herein.

REDACTED

50. The Agreement has been among the transitional Nissan agreements that have been channeled through Canyon Group, that is, DuPont under the Agreement from

REDACTED

DuPont did not object because the Nissan Chemical representative in the United States was working for Canyon Group.

REDACTED

51. Under FIFRA, third party ("me-too") registrants may elect to cite existing data regarding an already registered active ingredient rather than generating and submitting their own

data (after the ten-year exclusive use period). 7 U.S.C. §136a. No permission is required to cite to data outside the exclusive use period. *Id.* However, this right does not apply to formula information contained in the Confidential Statement of Formula, which is not available to the public or other third party registrants.

52. Under Articles 9 and 12 of the Agreement, DuPont is obliged in limited circumstances to The Agreement does not grant to Nissan the right Agreement.

REDACTED

53. Nissan and Canyon Group have used and are using Nissan's United States registration rights and DuPont's data in derogation of DuPont's Agreement.

54. By letter dated November 4, 2004, Nissan told DuPont as follows:

REDACTED Nissan then sought DuPont's consent

A true and correct copy of Nissan's letter dated November 4, 2004 is attached hereto as Exhibit 10 and by this reference is incorporated herein. DuPont denied this request.

55. By letter dated December 14, 2004, DuPont advised

Agreement remained in full force and effect throughout the
Territory until DuPont advised Canyon
Group that **REDACTED**

A true and correct copy of DuPont's letter dated December 14,
2004 is attached hereto as Exhibit 11 and by this reference is incorporated herein.

56. DuPont also told

REDACTED
Agreement. Nissan has
never furnished such verification to DuPont.

57. Nissan, not Canyon Group, responded in an electronic mail correspondence
stating that

REDACTED

A true and correct copy of Nissan's electronic mail response is attached
hereto as Exhibit 12 and by this reference is incorporated herein.

58.

REDACTED

is
attached hereto as Exhibit 13 and by this reference is incorporated herein. On information and

belief, the Gowan Company

REDACTED

59. On information and belief, Nissan and Canyon Group have shared DuPont's confidential information with a third party to enable the

in derogation of DuPont's rights under Article 6-1 of the

REDACTED

Agreement. This conduct breaches Article 4-2 and 6-1 of the

Agreement.

60. The parties continued to try to resolve their differences and had a meeting as recently as March 4, 2005. These efforts have failed. A true and correct copy of correspondence regarding the March 4, 2005 meeting is attached hereto as Exhibit 14 and by this reference is incorporated herein.

61. On information and belief, Canyon Group are surveying distributors and seeking to divert DuPont's **REDACTED** For example, on information and belief, distributors of crop protection products have been told that DuPont will stop distributing after December 2006 and that they should products now.

62. Canyon Group have advertised in crop protection trade magazines. For example, the March 2005 issue of included an advertisement **REDACTED** A true and correct copy of the Targa® advertisement in Sugar Beet Grower is attached hereto as Exhibit 15 and by this reference is incorporated herein. is registered for use in Delaware.

On information and belief, Canyon has or will register in each state that DuPont has registered including Delaware. .

63. On information and belief, Canyon Group are using Nissan's registration and essentially have copied DuPont's label in material respects in offering for sale in the United States trade name. A true and correct copy of the product label is attached hereto as Exhibit 16 and by this reference is incorporated herein.

REDACTED

64. By advertising, distributing and selling Canyon Group and Nissan, whether themselves or through their contractual partner are diverting, have diverted and will continue to divert DuPont to themselves, unless enjoined. DuPont will lose these customers.

REDACTED

65. By prematurely entering Canyon Group and Nissan will erode the pricing structure DuPont has created for in order to recoup a fair return on its investment.

IV. CAUSES OF ACTION

FIRST CAUSE OF ACTION **(Injunction in Aid of Arbitration)**

66. DuPont restates and incorporates by reference the foregoing allegations as if fully set forth herein.

67. The Agreement is a valid contract between DuPont and Nissan granting DuPont

REDACTED

68. Nissan has assigned responsibilities DuPont under the Agreement to Canyon Group.

69. DuPont has a substantial interest in protecting its contractual right to the provisions in the Agreement, which includes

70. Section 16-2 of the Agreement states “arbitration shall be held in Japan” for “any dispute arising out of or in connection with this Agreement . . .” and pursuant to the rules of the ICC.

71. A dispute currently exists whether Nissan and Canyon Group have breached the provisions of the Agreement by **REDACTED** in the United States. This dispute ultimately is subject to arbitration.

72. Neither party has initiated arbitration proceedings. The ICC will not be able to select an arbitrator and have the dispute heard and resolved before Nissan and Canyon Group **REDACTED** in the next growing season and thereby irreparably damaging DuPont. **REDACTED** will be applied during the growing season. In the next Nissan and Canyon Group will need to **REDACTED** After this period, the product will be available during the growing season. Once the growing season ends, there is no demand

73. The ICC Rules only grant authority to the arbitral tribunal to award interim injunctive relief. Before an arbitral tribunal is appointed, ICC Rules do not have a mechanism for issuing interim injunctive relief.

74. The ICC process for appointing an arbitral tribunal will not grant DuPont relief for this growing season. The process can take weeks, if not longer, and requires both contractual parties to cooperate in order to expedite proceedings.

75. The Agreement does not prevent DuPont from seeking preliminary injunctive relief from this Court or require that the matter be heard elsewhere. This

Court is better positioned to provide preliminary injunctive relief because the conduct sought to be enjoined is occurring only in the United States.

76. An injunction preventing Nissan and Canyon Group from

or contracting with a third

REDACTED

party, including

until an ICC-appointed arbitrator has issued a decision relative to whether the provisions remain in full force and effect will aid arbitration and further the parties' intent for a neutral arbitrator to decide the contractual dispute. Without an injunction, any dispute presented to an ICC-appointed arbitrator will become moot because Nissan and Canyon Group

and encroached on DuPont's

REDACTED

77. Allowing Canyon Group and Nissan to breach the provisions in the Agreement by allowing Canyon Group and

is causing and will cause DuPont irreparable harm. A breach of the provisions will (a) cause DuPont to lose customers to Canyon Group, (b) (c) deprive DuPont a fair return (d) disrupt and confuse DuPont's distribution network and customers,

REDACTED

(e) deprive DuPont of its contractually bargained-for

78. Allowing Canyon Group and Nissan

before the

Agreement

expires will harm DuPont's legitimate business interests and expectations. DuPont has expended considerable financial and human resources to (a) in the

REDACTED

and (b) obtain EPA and other regulatory agencies
registration and approval and to create commercial demand for **REDACTED**

DuPont undertook these efforts secure in the knowledge Nissan, either directly or through
affiliates and third parties, would not compete with DuPont in the markets it assiduously had
developed until the Agreement expired.

79. The balance of hardship favors DuPont. An injunction would maintain the status
quo until such time as an arbitral tribunal resolves the parties' contractual dispute.

SECOND CAUSE OF ACTION
(Tortious Interference With Contract)

80. DuPont restates and incorporates by reference the foregoing allegations as if fully
set forth herein.

81. DuPont does not know the relationship between Nissan and Canyon Group.
DuPont is not certain Canyon Group will consent to arbitration under the Development/License
Agreement, or whether it is an "Affiliate" that is subject to and bound by the terms and
conditions of the Agreement including the arbitration provision.

82. On information and belief, Canyon Group is a Delaware LLC conducting business
in the United States. Canyon Group either is subject to the terms of the arbitration or is
tortiously interfering with DuPont's contractual relationship with Nissan.

83. Canyon Group knows or should know of the Agreement.
Former Nissan employees are working for Canyon Group and are aware of the
Agreement, including DuPont's rights.

84. On information and belief, Canyon Group manufactured
by Nissan into the United States and is **REDACTED**

REDACTED

which it is distributing for sale

trademark.

85. Canyon Group is trying to divert DuPont customers

86. This conduct tortiously interferes with the DuPont-Nissan
Agreements.

THIRD CAUSE OF ACTION
(Breach of Contract)

87. DuPont restates and incorporates by reference the foregoing allegations as if fully
set forth herein.

88. DuPont and Nissan agreed that the Agreement would
continue in full force and effect in each country in the Territory

REDACTED

89. the
Agreement continues in full force and effect throughout the Territory,

90. The exclusivity provisions in Article 6-1 of the Agreement
remain in effect until Article 6-1 grants DuPont the
right

REDACTED

91. Canyon Group and Nissan have breached the Agreement
or by contracting with a third party, to conduct these activities in the
United States.

92. DuPont is entitled to injunctive relief to enjoin a breach of **REDACTED** provision. DuPont would ask this Court to resolve any contract issue the parties do not submit to arbitration.

FOURTH CAUSE OF ACTION
(Misappropriation of Confidential Information)

93. The formulation of a FIFRA-registered must conform to a Confidential Statement of Formula on file with the U.S. EPA.

94. The Confidential Formulation Statement is not available to the public and includes proprietary, confidential and trade secret information.

95. Under Articles 9 and 12, Nissan has agreed

REDACTED

96. On information and belief, Nissan and the Canyon Group have shared DuPont's confidential information with in breach of the Agreement, and under United States and Japanese laws protecting confidential information and trade secrets.

97. Nissan, Canyon Group and their contractual partners and agents will gain an unfair advantage if allowed to use DuPont's confidential information and trade secrets to compete against DuPont. The misappropriation of DuPont's confidential information and trade secrets is causing and will continue to cause DuPont irreparable harm unless and until enjoined.

WHEREFORE, plaintiffs demand judgment as follows:

A. Preliminarily enjoin Nissan and Canyon Group, including all other affiliates, agents, contractual partners such as or assigns,

REDACTED

an arbitral

tribunal hears the evidence and argument from the parties and issues a final decision on the merits' and

B. Declare that the exclusivity provisions are still in force and effect in the United States;

C. Award such other and further relief as the Court may deem just.

DATED: April 7, 2005

POTTER ANDERSON & CORROON LLP



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EXHIBITS 1 THRU 16

REDACTED

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, Richard L. Horwitz, hereby certify that on April 14, 2005, the attached document was served via hand delivery and electronically filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following and the document is available for viewing and downloading from CM/ECF:

Frederick L. Cottrell, III
Richards, Layton & Finger
One Rodney Square
P.O. Box 551
Wilmington, DE 19899-0551

I hereby certify that on April 14, 2005, I have emailed the documents to the following non-registered participant at the following address:

Larry Miller
Canyon Group, LLC
370 S. Main Street
Yuma, AZ 85364

By: _____



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